

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS, AMENDING THE CITY OF KELLER CODE OF ORDINANCES CHAPTER 3 – ANIMALS, FOWL, INSECTS AND REPTILES REGARDING REGULATIONS OF DANGEROUS ANIMALS; PROVIDING A MAXIMUM PENALTY OF \$500; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Keller, Texas, is a home-rule municipality having full powers of self-government and may enact ordinances relative to its citizens' health, safety, and welfare that are not inconsistent with the Constitution and laws of the State; and

WHEREAS, the City of Keller City Council (the "City Council") finds and determines that the passage of this ordinance as necessary to protect the public, health, safety, and welfare; and

WHEREAS, the City Council has determined the City's current dangerous dog provisions in the code of ordinances should be replaced in order to comply with and better utilize the statutory provisions provided by Chapter 822, Subchapter D of the Texas Health and Safety Code; and

WHEREAS, the City Council is authorized by law to adopt the provisions contained herein, and has complied with all the prerequisites necessary for the passage of this Ordinance, including but not limited to the Open Meetings Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS:

Section 1: THAT the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2. THAT the City of Keller Code of Ordinances Chapter 3 – Animals, Fowl, Insects and Reptiles, Section 3-100 - Definitions is hereby amended by replacing the term and definition of "Animal control authority" with the terms and definition of "*Animal control authority or animal services*" and by replacing the term and definition of "Dangerous Animal" with the term and definition of "Dangerous dog," both of which shall read as follows:

~~*Animal control authority. Means a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office or animal services. The Colleyville, Keller, Southlake, and Roanoke Regional Animal Services.*~~

~~*Dangerous animal dog. Means a dog that:*~~

- ~~*(1) Makes an unprovoked attack on a person or animal that causes bodily injury and occurs in a place other than a private enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own; or;*~~

Commented [MB1]: Changes in this section and the added definitions in Section 3 below are suggested in order to address the complex scenarios when the dog attacks a PERSON at the animal shelter, kennel, or dog park versus attacks on another dog in those same locations.

Commits

(2) commits unprovoked acts towards a person in a place other than an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own a private enclosure and those acts cause that person to reasonably believe that the animal will attack and cause bodily injury to that person; or

(3) makes an unprovoked attack on a domesticated animal that causes bodily injury to the animal and occurs in a place other than a private enclosure, commercial kennel, animal shelter, or city-designated dog park.

Section 3. THAT the City of Keller Code of Ordinances Chapter 3 – Animals, Fowl, Insects and Reptiles, Section 3-100 - Definitions is hereby amended by adding the term and definition of “Private enclosure” which shall be placed in the appropriate alphabetical order within the existing terms and shall read as follows:

Private enclosure. A fenced area, building, structure, or dwelling unit on private property where a dog is being kept, which is not open to the general public and is reasonably certain to prevent the dog from leaving the enclosure on its own. Commercial kennels, animal shelters, and city-designated dog parks are specifically excluded from the definition of *private enclosure*.

Section 4: THAT the City of Keller Code of Ordinances, Chapter 3 – *Animal, Fowl, Insects and Reptiles*, Section 3-220. – *Dangerous Animals; procedures and hearing* is hereby amended and replaced, which shall read as follows:

Sec. 3-220. – Dangerous ~~animals; procedures and dogs; determination; appeal~~ hearing.

(a) Report of attack. ~~The if a person reports an incident involving a dangerous dog, the animal control department authority may receive a investigate the incident. To report concerning a dog or animal, which has bitten or attacked an incident involving a human or animal. A complainant, who wishes the matter be heard, must file with the Colleyville Keller Municipal Court dangerous dog, a written sworn complaint that statement must be submitted to the animal control authority and must contain the following known information if known:~~

~~(1) Name name, address, and telephone number of the complainant and person submitting the statement;~~

~~(1)(2) the identity of any other witnesses;~~

~~(2)(3) Date date, time and location of the incident(s);~~

~~(3)(4) A complete description of the alleged dangerous dog or animal (breed, if known, as well as color and size);~~

~~(4)(5) Name name, address and telephone numbers of owners, if known, or the premises where the dog or animal is located;~~

~~(5)(6) A detailed statement that describing how the alleged dangerous dog or animal has bit or attacked a person or animal;~~

~~(6)(7)~~ A statement ~~that indicating whether~~ the alleged dangerous dog or animal has exhibited vicious propensities in its past conduct; and

~~(7)(8)~~ Any other facts and circumstances relating to the incident.

~~(b) Procedure after complaint is filed.~~ After a sworn affidavit (~~complaint~~) statement is filed, the ~~Colleyville, Keller, Southlake Regional Animal Services shall animal control authority is authorized to~~ investigate the complaint incident to determine if the dog ~~or animal is a~~ dangerous:

~~(b) Animal service findings dog.~~ The ~~Colleyville, Keller, Southlake Regional Animal Services shall make a finding regarding whether or not animal control authority shall notify the dog or animal is dangerous. If owner of the dog in writing of its determination.~~

~~(c) If for animal a dog is found to be dangerous, the animal services control authority shall notify the owner of the determination by personal service or certified mail - return receipt request. The notification will advise the owner of the right to appeal and will require that the owner perform the following requirements within thirty (30) days from receipt of the notice:~~

- ~~a. Register the dangerous dog or animal with the animal control department.~~
- ~~b. Restrain the dangerous dog or animal at all times on a leash, in the immediate control of an adult, who is at least seventeen (17) years of age, or in a secure enclosure.~~
- ~~c. Obtain and provide proof to the Colleyville, Keller, Southlake Regional Animal Services of liability insurance coverage or provide proof of such liability insurance or proof of current financial responsibility, in an amount of at least one hundred thousand dollars (\$100,000.00) to cover damages resulting from an attack by the dangerous dog or animal causing bodily injury or other damage to a person.~~
- ~~d. Post on all fences that face public areas, signs that state in bold letters "DANGEROUS ANIMAL." All signs must be obtained from and approved by the animal control department.~~
- ~~e. Require that the dangerous dog or animal wear an orange collar and red tag at all times. All collars and tags must be obtained from and approved by the animal control department.~~

~~(d) A owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control authority to the municipal court. To file an appeal, the owner must:~~

~~(1) file a notice of appeal of the animal control authority's dangerous dog determination with the municipal court;~~

~~(2) attach a copy of the determination from the animal control authority; and~~

~~(3) serve a copy of the notice of appeal on the animal control authority by mailing the notice through the United States Postal Service.~~

~~(e) The animal control authority is authorized to seize a dangerous dog and provide for the impoundment of the dog in secure and humane conditions while an appeal is pending or until the owner complies with Sec. 3-225. If the owner refuses to voluntarily~~

Commented [MB2]: Moved to new Section 3-225.

Commented [MB3]: These requirements are added. This section is nearly identical to the state statutes.

Commented [MB4]: Added to provide animal control the authority to impound a dog during the appeal or until compliance is reached if it so wishes.

surrender the dog upon request, the municipal court is authorized to issue a warrant for such seizure. The animal control authority shall return the dog impounded pursuant to the section upon:

- (1) a determination by the municipal court that the dog is not dangerous; or
- (2) the owner's compliance with Sec. 3-225 and payment of all applicable costs and fees related to the seizure impoundment of the dog.

(f) Appeal hearing.

- (1) ~~The of determination. The owner of court, on receiving a request for a hearing pursuant to subsection (d), shall set a time for a hearing to determine whether the dog is a dangerous dog or animal may appeal animal services determination to the municipal court no later than the fifteenth (15th) calendar day after being notified of the animal service determination. The municipal court of respective jurisdiction shall conduct a hearing within fifteen (15) days, to determine if the dog or animal is dangerous.~~
- (2) The court shall give written notice of the time and place of the hearing to the owner or harbinger of the dog, to animal services, and to the person who made the complaint.
- (3) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.
- (4) At ~~such~~the hearing, the municipal court may receive testimony concerning the incident under investigation, and/or consider the affidavits and/or complaints on file, ~~to determine if,~~
- (5) The municipal court shall make a determination, based on the preponderance of evidence presented, whether the dog or animal is a dangerous dog as defined by this chapter.
- (6) If the owner or harbinger of the dog does not appear at the hearing, the municipal court may proceed with evidentiary findings without the owner's or harbor's presence.
- (7) If the dog or animal is found dangerous, the municipal court shall, ~~for the protection of the public health, safety, and welfare of the community, mandate compliance with subsection (b)(1)a., b., and c., d., and e. determine whether the dog or animal should be removed from the corporate city limits of Colleyville, Keller or Southlake, humanely destroyed by animal services, a veterinarian, or released to an animal rescue organization~~ order compliance with Sec. 3-225.

~~(d)(a) Procedure when no~~The owner may appeal.

- a. ~~If the owner~~decision of the municipal court in the manner described by Health and Safety Code § 822.0424, as amended. During the pendency of such appeal, animal services will retain custody of the dangerous dog or animal does not comply with subsection (b)(1)a., b., or c. above, within thirty (30) days of being notified the animal has been found dangerous, nor has appealed pursuant to section (b)(2) above, the owner shall surrender the animal to the animal control department. ~~If the owner does not~~

~~surrender the animal, then the animal control officer shall obtain from the municipal court, a warrant, authorizing the animal control department to seize the animal. Thereafter, the animal control department shall seize the animal, or order its seizure, and provide a secure and humane place for the impoundment of the animal.~~

~~If the owner complies with subsection (b)(1)a., b., and c., above, before the eleventh (11th) day on which the dangerous dog or animal was seized or was surrendered to the animal control officer, the municipal court shall order determine the return of the dangerous dog or animal estimated costs to house~~

~~If the owner has not complied with subsection (b)(1)a., b., and c., above, before the eleventh (11th) day on which the dangerous dog or animal was seized or surrendered to the animal control department, the municipal court shall care for the protection of the public health, safety, and general welfare of the community, determine whether the animal should be removed from the corporate city limits of the city, humanely destroyed by the animal control department, a veterinarian, or released to an animal rescue organization.~~

~~(2)(8) The owner of an impounded dangerous dog or animal shall be held responsible for any cost or fee assessed by the city related to the seizure, impoundment, and destruction of the animal during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.~~

Section 4: THAT the City of Keller Code of Ordinances, Chapter 3 – *Animal, Fowl, Insects and Reptiles*, is hereby amended by adding Section 3-225, which shall read as follows:

Sec. 3-225. – Dangerous dogs; requirements; failure to comply hearing.

- (a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:
- (1) register the dangerous dog with the animal control authority;
 - (2) restrain the dangerous dog or animal at all times on a leash in the immediate control of a person who is at least seventeen (17) years of age or in a secure enclosure as defined by this chapter;
 - (3) obtain and provide proof to the animal control authority of liability insurance coverage in an amount of at least one hundred thousand dollars (\$100,000.00) to cover damages resulting from an attack by the dangerous dog causing bodily injury or other damage to a person;
 - (4) post on the exterior of the fence that houses the dangerous dog signs that state in bold letters "DANGEROUS DOG," which will be provided by the animal control authority; and
 - (5) attach onto the dog a dangerous dog collar and dangerous dog tag as provided by animal control authority, which shall be worn by the dangerous dog at all times.
- (b) The owner of a dangerous dog who does not comply with Subsection (a) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.

Commented [MB5]: This is a new section. The requirements and procedures to enforce non-compliance in this section were separated from Sec. 3-220 simply for ease of reading.

- (c) For purposes of this section, a person learns that the person is the owner of a dangerous dog:
- (1) when the owner is informed by the animal control authority that the dog is a dangerous dog pursuant to this chapter and the owner does not file a timely appeal to the municipal court; or
 - (2) when the owner receives notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog pursuant to this chapter.
- (d) Upon determination by the animal authority that an owner or harbinger has failed to keep a dangerous dog in compliance with this chapter, the animal control authority may request a hearing before the municipal court to determine the disposition of the dangerous dog.
- (e) Animal services is authorized to seize and impound any dangerous dog that is not kept in compliance with this chapter until a hearing is held pursuant to this section.
- (f) Compliance hearing.
- (1) The municipal court, on receiving a request for a hearing pursuant to this section, shall set a time for a hearing to determine whether the dog is a dangerous dog.
 - (2) On receiving a request for a hearing under this section, the court shall set a time for a hearing to determine whether the owner or harbinger of a dangerous dog has complied with all the requirements of this division. If the dog is seized prior to the hearing, the hearing must be held not later than the tenth day after the date on which the dangerous dog is seized or delivered.
 - (3) The municipal court shall give written notice of the time and place of the hearing to the owner or harbinger of the dangerous dog and to animal services.
 - (4) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.
 - (5) If the owner or harbinger of the dangerous dog does not appear at the hearing, the municipal court may proceed with evidentiary findings without the owner's or harbor's presence.
 - (6) The municipal court shall make a determination, based on the preponderance of evidence presented, whether the owner or harbinger of the dangerous dog has complied with all the requirements of this section.
- (g) If the municipal court finds that the owner or harbinger of a dangerous dog has failed to comply with the requirements of this section, the municipal court shall order:
- (1) the animal control authority to seize the dog, if the dangerous dog has not been seized prior to the hearing, and
 - (2) one of the following:
 - a. the humane destruction of the dangerous dog on or after the eleventh day after the date of the order;

- b. the immediate removal of the dangerous dog from the city, provided that if such dog is found at any time to be within the city on or after the eleventh day after the date of the order, the court will order animal services to seize the dangerous dog after issuing a warrant authorizing the seizure, and order the humane destruction of such dangerous dog; or
 - c. the return of the dangerous dog to the owner or harbinger upon full payment of the cost of seizure, impound, and care to animal services.
- (h) An order to destroy a dog is stayed for a period of 10 calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal pursuant to Health and Safety Code § 822.0424. The court may not order the destruction of a dog during the pendency of such appeal. The court shall determine the estimated costs to house and care for the impounded dangerous dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.
- (i) The municipal court may issue orders and warrants for the seizure, impoundment, and disposition of a dangerous dog as authorized by this section.

Section 5: THAT the City of Keller Code of Ordinances, Chapter 3 – ~~Animal, Fowl, Insects and Reptiles~~, Section 3-230. – ~~Failure to release or remove dog~~ is hereby amended and replaced, which shall read as follows:

Sec. 3-230. –~~Failure to release or remove~~– Dangerous dog violations.

- (a) ~~Any person who owns or keeps custody or control of a dangerous dog and fails to comply with Sec. 3-225 commits an offense if he knowingly possesses and fails to release to the animal control officer a dog that has been charged by sworn affidavit as provided in section 3-220 of under~~ this chapter.
- (b) A person commits an offense if the person ~~knowingly possesses and fails to remove a dog determined to be dangerous under section 3-220 "Dangerous animals; procedure~~ is the owner of a dangerous dog and the dog makes an unprovoked attack on another person or domesticated animal outside a private enclosure and such attack causes bodily injury.
- (c) ~~If hearing" of a person is found guilty of an offense under chapter from the corporate limits of subsection (b), the city court may order the dangerous dog humanely destroyed.~~

Section 6: THAT this Ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Keller, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in such event the conflicting provisions of the other ordinances are hereby repealed.

Section 7: THAT any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall, upon final

Commented [MB6]: The current section 3-230 makes it an offense to fail to release an animal to animal control that has been charged as dangerous. The issuance of a warrant and then seizure is a better way to handle this. The current section also makes it an offense to fail to remove a dangerous dog from the city. I don't think that applies in every case (especially when the court does not order the dog to be removed). All of this can be enforced through court orders, warrants, and contempt of court orders.

conviction thereof, be fined in an amount not to exceed five hundred dollars (\$500.00). Each and every day any such violation continues shall constitute a separate offense and shall be punishable as such hereunder.

Section 8: THAT if any section, paragraph, clause, phrase, or provision of this Ordinance, shall for any reason be held to be invalid or unenforceable, the validity or unenforceability of such section, paragraph, clause, phrase, or provision shall not effect any of the remaining provisions of this Ordinance.

Section 9: THAT this Ordinance shall become effective upon its adoption and publication provided by law.

AND IT IS SO ORDAINED.

PASSED AND APPROVED this the _____ day of _____, 20____.

CITY OF KELLER, TEXAS

Armin Mizani, Mayor

Attest:

Kelly Ballard, City Secretary

Approved as to Form:

L. Stanton Lowry, City Attorney